

MT LEGISLATIVE HISTORY

Chapter 417 19 77

Bill H 791 S _____

Original bill & hist. ✓ C

H. Committee on St. Admin.

S. Committee on St. Admin.

Hearing Date(s) Feb 21 ✓ C

Hearing Date(s) Mar 26 ✓ C

Feb 22 ✓ C

Mar 30 ✓ C

_____ ✓ C

Fish & Game Apr 04 ✓ C

_____ ✓ C

(no status) Apr 06 ✓ C

Date Out Feb 22 ✓ C

Apr 06 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

1 House BILL NO. 791
 2 INTRODUCED BY State Administration Committee
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE THE DEPARTMENT
 5 HEAD OF THE DEPARTMENT OF FISH AND GAME A DIRECTOR APPOINTED
 6 BY THE GOVERNOR IN ACCORDANCE WITH SECTION 82A-106, R.C.M.
 7 1947; TO REMOVE CERTAIN QUALIFICATIONS FOR THE DIRECTOR OF
 8 THE DEPARTMENT OF FISH AND GAME; TO REALLOCATE CERTAIN
 9 FUNCTIONS OF THE STATE FISH AND GAME COMMISSION TO THE
 10 DEPARTMENT OF FISH AND GAME; AND TO CHANGE THE NAME OF THE
 11 STATE FISH AND GAME COMMISSION; AMENDING SECTIONS 26-101.1,
 12 26-104, 26-104.4 THROUGH 26-104.7, 26-107 THROUGH 26-110,
 13 26-110.3, 26-114, 26-118, 26-119, 26-121, 26-123, 26-126
 14 THROUGH 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1,
 15 26-202.4 THROUGH 26-202.8, 26-204, 26-210, 26-212, 26-212.1,
 16 26-215, 26-220, 26-222, 26-225, 26-226, 26-228, 26-230,
 17 26-233, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307,
 18 26-307.1, 26-319, 26-320, 26-324, 26-331, 26-332, 26-334,
 19 26-335, 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813,
 20 26-814, 26-909, 26-911 THROUGH 26-915, 26-918 THROUGH
 21 26-920, 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206
 22 THROUGH 26-1208, 26-1210, 26-1402, 26-1403, 26-1502 THROUGH
 23 26-1505, 26-1508, 26-1509, 26-1601 THROUGH 26-1603, 26-1605,
 24 26-1607 THROUGH 26-1610, 26-1612 THROUGH 26-1614, 26-1701,
 25 26-1702, 26-1704, 26-1802, 26-1804 THROUGH 26-1808, 46-1903,

INTRODUCED BILL

1 53-1012, 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304
 2 THROUGH 62-306, 62-308, 62-310, 62-311, 62-314, 62-401
 3 THROUGH 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518,
 4 75-5205, 82A-2001, 82A-2004, 89-3405, 89-3407, AND 89-3449,
 5 R.C.M. 1947; AND REPEALING SECTIONS 26-103, 26-106, 26-124,
 6 AND 82A-2003, R.C.M. 1947."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 82A-2001, R.C.M. 1947, is amended
 10 to read as follows:

11 "82A-2001. Department of fish and game -- creation --
 12 head. There is created a department of fish and game. The
 13 department head is the ~~state fish and game commission~~
 14 ~~provided for in section 82A-2004 of this chapter, but~~
 15 ~~section 82A-107 of this act does not apply to the commission~~
 16 ~~as a department head~~ director of fish and game appointed by
 17 the governor in accordance with 82A-106."

18 Section 2. Section 82A-2004, R.C.M. 1947, is amended
 19 to read as follows:

20 "82A-2004. ~~State fish~~ Fish and game commission --
 21 composition -- qualifications -- designation. (1) There is
 22 a state fish and game commission.

23 (2) The commission consists of five ~~15~~ members. At
 24 least one member shall be experienced in the breeding and
 25 management of domestic livestock. The governor shall appoint

one ~~++~~ member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweetgrass counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie counties.

(3) Appointments shall be made without regard to political affiliation and shall be made solely for the welfare of the fish, game, and wildlife of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish and game, and the requirements for the conservation and protection of fish, game, and game birds and animals.

(4) A vacancy occurring on the commission shall be filled by the governor ~~with the consent of the senate~~ in the same manner and from the district in which the vacancy occurs.

(5) The state fish and game commission is designated as a quasi-judicial board for purposes of section 82A-112 of ~~this act.~~

(6) In addition to its designation as a quasi-judicial board, the commission is the policy and rule-making body for the department except where the department has been specifically delegated rule-making authority. The commission shall carry out such other duties as specified by law.

Section 3. Section 26-101.1, R.C.M. 1947, is amended to read as follows:

"26-101.1. Definitions. Unless the context requires otherwise, in Title 26 the following definitions apply:

(1) "Department" means the department of fish and game provided for in Title 82A, chapter 20~~+~~.

(2) "Director" means the director of fish and game provided for in section 82A-2003~~+~~ 82A-2001.

(3) "Warden" means a state fish and game warden~~+~~.

(4) "Commission" means the state fish and game commission provided for in section 82A-2004."

Section 4. Section 26-104.6, R.C.M. 1947, is amended to read as follows:

1 "26-104.6. Acquisition and sale of lands or waters by
2 ~~commission department~~. (1) The ~~commission department~~ may
3 acquire by purchase, condemnation, lease, agreement, gift,
4 or devise, and may acquire easements upon lands or waters
5 for the purposes listed in this subsection. The ~~commission~~
6 ~~department~~ may acquire, develop, operate, and maintain
7 acquired lands or waters:

8 (a) For ~~for~~ fish hatcheries, nursery ponds, or game
9 farms;

10 (b) As ~~as~~ lands or water suitable for game, bird,
11 fish, or fur-bearing animal restoration, propagation, or
12 protection;

13 (c) For ~~for~~ public hunting, fishing, or trapping
14 areas;

15 (d) To ~~to~~ capture, propagate, transport, buy, sell, or
16 exchange any game, bird, fish, fish eggs, or fur-bearing
17 animals needed for propagation or stocking purposes, or to
18 exercise control measures of undesirable species;

19 (e) To ~~to~~ extend and consolidate by exchange, lands or
20 waters suitable for these purposes.

21 (2) The ~~commission department~~ may dispose of lands and
22 waters acquired by it on those terms after that public
23 notice, and without regard to other laws which provide for
24 sale or disposal of state lands, and with or without
25 reservation, as it considers necessary and advisable. Notice

1 of sale describing the lands or waters to be disposed of
2 shall be published once a week for ~~three~~ ~~{3}~~ successive
3 weeks in a newspaper with general circulation printed and
4 published in the county where the lands or waters are
5 situated, or if no newspaper is published in that county
6 then in any newspaper with general circulation in that
7 county. The notice shall advertise for cash bids to be
8 presented to the ~~commission or the director~~ within ~~thirty~~
9 ~~{30}~~ days from the date of the first publication. Each bid
10 must be accompanied by a cashier's check or cash deposit in
11 an amount equal to ~~ten percent~~ ~~{10%}~~ of the amount bid. The
12 highest bid shall be accepted upon payment of the balance
13 due within ~~ten~~ ~~{10}~~ days after mailing notice by registered
14 mail to the highest bidder. If that bidder defaults on
15 payment of the balance due, then the next highest bidders
16 shall be similarly notified in succession until a sale is
17 completed. Deposits shall be returned to the unsuccessful
18 bidders except bidders defaulting after notification. The
19 ~~commission department~~ shall reserve the right to reject any
20 bids which do not equal or exceed the full market value of
21 the lands and waters as determined by the ~~commission~~
22 ~~department~~. The ~~commission department~~ shall convey the lands
23 and waters by deed without covenants of warranty, executed
24 by the governor, or in his absence or disability by the
25 lieutenant governor, attested by the secretary of state, and

1 further countersigned by the ~~chairman of the commission~~
 2 ~~director. The deed shall be attested by the secretary of~~
 3 ~~the commission but need not be acknowledged.~~

4 (3) Notwithstanding the provisions of section 82-1918,
 5 ~~R.C.M. 1947,~~ the commission department is authorized to
 6 utilize the installment contract method to facilitate the
 7 acquisition of wildlife management areas, in which game and
 8 nongame fur-bearing animals, and game and nongame birds may
 9 breed and replenish, and areas which provide access to
 10 fishing sites for the public. In no case may the total cost
 11 of such installment contracts exceed the cost of purchases
 12 authorized by ~~commission~~ the department and appropriated by
 13 the legislature."

14 Section 5. Section 26-107, R.C.M. 1947, is amended to
 15 read as follows:

16 "26-107. State fish and game wardens -- appointment --
 17 qualifications. The ~~directory by and with the consent and~~
 18 ~~approval of the commission~~ shall have the power to employ
 19 and appoint a deputy director, and a sufficient number of
 20 state fish and game wardens for the proper enforcement of
 21 the fish and game laws of the state, and the orders, rules
 22 and regulations of the commission department, and for such
 23 other purposes as the director may designate. State fish and
 24 game wardens shall be selected from applicants who have
 25 passed such an examination as may be required according to

1 the rules adopted and promulgated by the commission
 2 department. No person shall be appointed a state fish and
 3 game warden until a certificate shall have been issued to
 4 him by the commission department to the effect that he has
 5 passed the required examination and is a fit and proper
 6 person to perform the duties of the office. State fish and
 7 game wardens employed and appointed by virtue of this act
 8 shall be persons who have an interest in protection,
 9 conservation and propagation of wildlife, game and
 10 fur-bearing animals, fish and game birds; they shall devote
 11 all of their time to their official duties."

12 Section 6. Section 26-114, R.C.M. 1947, is amended to
 13 read as follows:

14 "26-114. Appointment of ex officio state fish and game
 15 wardens. All sheriffs and their deputies, constables, all
 16 peace officers of the state, or any subdivision thereof, and
 17 all state forest officers, and such other officers of the
 18 United States forest service or agents of the United States
 19 fish and wildlife service which are assigned to duty in this
 20 state, and field personnel ~~fish and game commission of the~~
 21 department, as the ~~directory with the approval of the state~~
 22 ~~fish and game commission~~, may appoint are hereby made ex
 23 officio state fish and game wardens, without pay, except
 24 that the commission department may, in its discretion, allow
 25 traveling expenses, as provided for in sections 59-538,

1 59-539, and 59-801, which, if allowed, shall be paid upon
 2 proper vouchers from the state fish and game funds--and. Ex
 3 ~~officio state fish and game wardens~~ shall have the same
 4 powers with reference to the enforcement of the fish and
 5 game laws of this state as regularly appointed state fish
 6 and game wardens, and it is hereby made their duty to
 7 assist, whenever possible, in the enforcement of said laws."

8 Section 7. Section 26-119, R.C.M. 1947, is amended to
 9 read as follows:

10 "26-119. ~~Fish and game commission~~ Department to
 11 procure plans for construction projects. It shall be the
 12 duty of the ~~state fish and game commission of the state of~~
 13 ~~Montana~~ department to procure suitable plans and
 14 specifications for any construction project under its
 15 authority of under authority of the state legislature, when
 16 the estimated value or cost of the same shall be more than
 17 ~~one thousand dollars (\$1,000)~~ but less than ~~five thousand~~
 18 ~~dollars (\$5,000)~~ and ~~said commission~~ the department shall
 19 cause said project to be constructed, but in accordance with
 20 such plans and specifications, by contract, said contract to
 21 be let after publishing a notice stating the time and place
 22 of letting the same, and where plans and specifications may
 23 be seen. ~~Said notice~~ Notice shall be published not less
 24 than once a week for ~~two (2)~~ weeks prior to the time of
 25 letting such contract, in some newspaper of general

1 circulation in the county in which said project is to be
 2 constructed, and elsewhere if deemed best by ~~said~~
 3 ~~commission, and said commission~~ the department. ~~The~~
 4 ~~department~~, if not satisfied with the bids received, or for
 5 any other reason, may reject any and all bids received and
 6 readvertise as often as may be necessary. Only one bid need
 7 be received and the contract shall be let to the lowest
 8 responsible bidder. Any person to whom a contract may be
 9 given shall be required to give a good and sufficient bond,
 10 conditioned for the faithful performance and completion of
 11 such contract, the same to be approved by the ~~commission or~~
 12 ~~some member of the commission~~ department. The ~~commission~~
 13 department may contract for construction projects estimated
 14 to cost ~~one thousand dollars (\$1,000)~~ or less without
 15 providing for plans or specifications, notice, competitive
 16 bidding or performance bonds."

17 Section 8. Section 26-918, R.C.M. 1947, is amended to
 18 read as follows:

19 "26-918. Grounds for suspension or revocation of
 20 license. Every license, or right to apply for and hold such
 21 license, may be suspended or revoked ~~by the fish and game~~
 22 ~~commission~~ upon any of the following grounds:

- 23 (1) Having ceased to meet all of the qualifications
- 24 for holding a license.
- 25 (2) Fraud or deception in procuring a license.

(3) Fraudulent, untruthful or misleading advertising.

(4) Conviction of a felony, until civil rights are restored or until time of any deferred sentence for a felony has expired.

(5) Two ~~(2)~~ convictions, or bond forfeitures, of one hundred ~~dollars~~ ~~(\$100)~~ or more as to violations of the fish and game or outfitting laws or regulations of the state of Montana or of the United States.

(6) A substantial breach of any contract with any person utilizing the services of the license holder provided that such breach is established as a matter of final judgment in a court of law.

(7) The willful employment of an unlicensed guide by an outfitter.

(8) Negligence or misconduct while acting as an outfitter or guide which negligence or misconduct causes a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide."

Section 9. Section 26-919, R.C.M. 1947, is amended to read as follows:

"26-919. Procedure for revocation or suspension of license. Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the

facts upon which such charge or recommendation is based and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the fish and game director. Thereupon, the fish and game director shall initiate a preliminary investigation of all facts in connection with the charge. A copy of all information shall be transmitted to the advisory council. The advisory council may make recommendation as to the action to be taken provided that any such recommendation shall be made, in writing and delivered to the director, within ~~twenty~~ ~~(20)~~ days after date of transmittal of such information to the council. If the accusation be deemed to be unfounded or trivial, the fish and game director shall dismiss the same ~~and report his action to the fish and game commission~~ and will advise the licensee charged and the complaining party of the action. Should the fish and game director determine the charge or recommendation to have good cause and to be sufficiently founded, he shall recommend to the fish and game commission that the same be approved and the revocation or suspension be effected. The fish and game director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved, not less than ~~twenty~~ ~~(20)~~ days prior to the day set for hearing thereon which said hearing shall be before the fish and game

commission at a time and place set by such commission. At the hearing the licensee involved may be represented by counsel. After full, fair and impartial hearing, the fish and game commission may suspend the accused's license or his right to hold a license for a period not to exceed three-{3} years or may order the license revoked or may dismiss the charge or recommendation based upon the facts shown at the hearing. A revoked or suspended license may be reissued or reinstated at the discretion of the commission."

Section 10. Section 26-920, R.C.M. 1947, is amended to read as follows:

"26-920. Appeal to district court. Any person who feels aggrieved by ~~any action of the director in denying the denial of~~ issuance of a license, or ~~of the fish and game commission in suspending or revoking his suspension or~~ revocation of a license as an outfitter or guide, may appeal to the district court of the county of his residence, within ~~thirty-{30}~~ days after the date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the commission and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo and, upon demand in writing, either party shall be entitled to trial

by jury. The court may sustain or reverse the action of the commission or take such other action as the court may deem just and proper. If the commission or the court has ordered a stay of any revocation or suspension and the commission's revocation or suspension is thereafter sustained by the court the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the commission."

Section 11. Section 26-1508, R.C.M. 1947, is amended to read as follows:

"26-1508. Reports and objections to federal actions injuring fish and wildlife -- files and records. The Montana state fish and game department shall observe ~~and report to the Montana state fish and game commission concerning~~ acts and omissions on the part of the government of the United States and its agencies within the state of Montana which do, will or might affect adversely the fish and wildlife resources, including but not limited to the fishing streams within the state, and upon receiving such ~~reports~~ information, the ~~said commission department~~ shall without delay send formal notification in writing, by certified mail, to the appropriate federal agency or agencies involved, setting forth in detail the appropriate objections of the state of Montana to the acts and omissions aforesaid. ~~Said commission~~ The department shall keep complete files and

1 records, available for public inspection, of all matters and
2 things done, and all communications and correspondence sent
3 and received, pursuant to this section."

4 Section 12. Section 26-1802, R.C.M. 1947, is amended
5 to read as follows:

6 "26-1802. Definitions. As used in this act ~~chapter the~~
7 ~~following definitions apply:~~

8 (1) ~~"department Department"~~ means the department of
9 fish and game~~s~~.

10 (2) ~~"director Director"~~ means the director of the
11 state department of fish and game~~s~~.

12 ~~(3) "commission" means the fish and game commission~~

13 ~~(4) (3) "ecosystem Ecosystem"~~ means a system of living
14 organisms and their environment, each influencing the
15 existence of the other and both necessary for the
16 maintenance of life~~s~~.

17 ~~(5) (4) "endangered Endangered species"~~ means any
18 species or subspecies of wildlife actively threatened with
19 extinction due to any of the following factors:

20 (a) the destruction, drastic modification, or severe
21 curtailment of its habitat, or

22 (b) its overutilization for scientific, commercial or
23 sporting purposes, or

24 (c) the effect on it of disease, pollution, or
25 predation, or

1 (d) other natural or man-made factors affecting its
2 prospects of survival or recruitment within the state, or

3 (e) any combination of the foregoing factors. The
4 ~~commission department~~ shall have authority to recommend that
5 the legislature include any species or subspecies of fish
6 and wildlife appearing on the United States' list of
7 endangered native fish and wildlife as it appears on the
8 effective date of this chapter (part 17 of title 50 of the
9 Code of Federal Regulations, appendix D) as well as any
10 species or subspecies of fish and wildlife appearing on the
11 United States' list of endangered foreign fish and wildlife
12 (part 17 of title 50 of the Code of Federal Regulations,
13 appendix A), as such list may be modified hereafter~~s~~.

14 ~~(6) (5) "management Management"~~ means the collection
15 and application of biological information for the purposes
16 of increasing the number of individuals within species and
17 populations of wildlife up to the optimum carrying capacity
18 of their habitat and maintaining such levels. The term
19 includes the entire range of activities that constitute a
20 modern scientific resource program including, but not
21 limited to, research, census, law enforcement, habitat
22 acquisition and improvement, and education. Also included
23 within the term, when and where appropriate, is the periodic
24 or total protection of species or populations as well as
25 regulated taking~~s~~.

~~(77)(6)~~ "nongame Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as "nongame wildlife" for purposes of this act ~~chapter~~.

~~(87)(7)~~ "optimum Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

~~(97)(8)~~ "person Person" means any individual, firm, corporation, association or partnership.

~~(107)(9)~~ "take Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

~~(117)(10)~~ "wildlife Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean or other wild animal or any part, product, egg or offspring or the dead body or parts thereof."

Section 13. There is a new R.C.M. section that reads as follows:

Uniform terminology. (1) Wherever the words "Montana fish and game commission", "state fish and game commission", "fish and game commission", "commission", "members of said

commission", or "chairman of the commission" appear in 26-104, 26-104.4, 26-104.5, 26-104.7, 26-108, 26-109, 26-110, 26-110.3, 26-118, 26-121, 26-123, 26-126, 26-127, 26-128, 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1, 26-202.4, 26-202.5, 26-202.6, 26-202.7, 26-202.8, 26-204, 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225, 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324, 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911, 26-912, 26-913, 26-914, 26-915, 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206, 26-1207, 26-1208, 26-1210, 26-1402, 26-1403, 26-1502, 26-1503, 26-1504, 26-1505, 26-1509, 26-1601, 26-1602, 26-1603, 26-1605, 26-1607, 26-1608, 26-1609, 26-1610, 26-1612, 26-1613, 26-1614, 26-1701, 26-1702, 26-1704, 26-1804, 26-1805, 26-1806, 26-1807, 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304, 62-305, 62-306, 62-308, 62-310, 62-311, 62-314, 62-401, 62-402, 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518, 75-5205, 89-3405, 89-3407, and 89-3449, R.C.M. 1947, the words "department of fish and game" or "department", if it is clear which department is involved, are substituted therefor.

(2) The code commissioner may make any required grammatical changes necessitated by the replacement of

1 certain words under subsection (1).

2 Section 14. Section 26-324, R.C.M. 1947, is amended to
3 read as follows:

4 "26-324. Penalty. A person violating any state law
5 pertaining to fish and game thereto, or the orders, rules,
6 and regulations of the commission ~~or department~~ is, unless a
7 different punishment is expressly provided by law for the
8 violation, guilty of a misdemeanor and shall be fined not
9 less than ~~twenty-five dollars (\$25)~~ nor more than ~~five~~
10 ~~hundred dollars (\$500)~~, or imprisoned in the county jail
11 for not more than ~~six (6)~~ months, or both fined and
12 imprisoned. In addition, the person shall, in the discretion
13 of the court, forfeit his license and privilege to hunt,
14 fish, or trap within this state for a period of ~~sixteen (16)~~
15 months from the date of conviction."

16 Section 15. Repealer. Sections 26-103, 26-106, 26-124,
17 and 82A-2003, R.C.M. 1947, are repealed.

-End-

STATE ADMINISTRATION COMMITTEE

45 Legislature

Page 21

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
791	to make the dept. head of the dept. of fish & game be appointed by the governor as per 82A-106; removing certain qualifications for the director, changing functions of the commission, changing name of the commission	2-16-77	STATE ADMIN. COMMITTEE	2-21-77	As Amended Do Pass	2/22
794	defining the trustee and fiduciary responsibilities of the retirement boards of the hwy. patrol, game wardens, PERS, sheriffs', judges'; revising and clarifying laws pertaining to aforementioned responsibilities	2-16-77	BRAND	2-21-77	Do Pass	2/22
795	amending the montana recall & advisory recall act, initiative No. 73; to clarify scope of application, specify grounds, establish responsibilities on the part of petitioners, refer to bill--it is lengthy	2-16-77	BARDANOUE, MELOY, SCULLY	2-16-77	Transferred to Judiciary	2/18
798	to create a department of public advocacy & consumer protection & specifying its functions, amending numerous sections	2-17-77	DUSSAULT	2-22-77	Do Not Pass	2/22
801	creating a municipal police officers' retirement system & providing for its administration; amending numerous sections	2-17-77	BARDANOUE	2-22-77	As Amended Do Pass	2/23
804	to permit legislators to continue to participate in public retirement systems while serving in the Montana legislature, effec. immediately	2-17-77	STATE ADMINISTRATION COMMITTEE	2-22-77	Do Pass	2/22

12

February 21, 1977



The meeting was called to order by Lien at 8:00 a.m. The roll call was taken, with Menahan and Meyer excused.

Dick Hargesheimer distributed his summary, see attachment #1.

HB 791-BOB LOHN explained that another bill had been proposed by Rep. Johnston, but such extensive amendments had been proposed that a new bill was, by necessity, written. He added that additional amendments would have to be added to the new bill to specify the commission's participation in land acquisition. Lohn felt that this brought the commission's responsibilities up to par with what the Governor saw fit for them to deal with; and also brought the director of the department in line with the other department heads in the state. "The director can hire and fire, and manage the department in the usual manner. All of the traditional managerial functions are not vested with this director presently. This bill tries to put these in his hands. A commission that only meets once a month for one day can't really run a department. The commission has always been the policy making body, and with the amendments, it still is."

JO ELLEN ESTENSEN-Representative, Helena, Montana--"We were talking about it in the Appropriations Committee, and felt that the commission had extensive powers relative to the department. I studied this before looking at the budget. Fish and Game is on zero-based, and as I understand, the director doesn't always know what people in the field are doing. I would encourage you to take a look at this. It will not allow a lot of behind the scenes maneuvering."

GEORGE JOHNSTON-Representative, Cut Bank, Montana--"I sponsored the original bill that started all this, and I feel that any additional testimony would be redundant. I urge your concurrence."

OPPONENTS

HARRY McNEIL, State Wildlife Organization--He submitted a written statement, see attachment #2. I can imagine the problems if the director of the wildlife association had to worry about consulting the Governor about every decision he made, and was worried about losing his job if he put forth the wrong decision.

RAY NITZ, Hill County Wildlife Association--I feel this bill would be taking away the power of the commission, and eliminating the tenure of the director. You won't get anyone with any strength.

GARY STUCKER, Wildlife Federation--The commission is appointed by the Governor, and we can get his input in this way. I feel this is a more complete handle on the picture, and maybe the department.

KEN JONES, private citizen, Bozeman, Montana--"I am one of the 138,000 people who purchased residency licenses; and I feel the commission should return the power to the director. This bill amends 137 sections of the code, and I feel there should be a lot more input before anything is done. There's also a bill in to increase the board. Why do this when you are taking the powers away?

BARDO GERRA, Northwest Section of the Wildlife Society--I am a professional biologist wanting to go on record as supporting the commission system, and opposing eliminating the tenure of the director.

BOB EMMENS, Montana citizen--Frank Dunkle was the director of Fish and Game when I first came on the commission, and at that time I could not claim expertise in

anything, but the other commissioners did. I had to grasp everything for the first time. I know a little about administration; and feel that this would make the Governor able to remove the director. There would be no buffer between the Governor and the director, and the Governor and the staff. People couldn't go to the director, and they couldn't go to the Governor. The commission protected everybody from one another. The political pressure comes from the top, and all of this is being given to the director, who then could lose his job. How would you like it if the legislature were composed of all lawyers? Or a commission that was all biologists? I supported Judge in his campaign, but I disagree with this. You have a problem at the very beginning - you have a repealer in the title, then on page four it is given back. The director can hire and fire. There's no right of appeal.

LES PENGELLY, President-Elect, Wildlife Society, Missoula, Montana, also Chairman of the Wildlife Department-University of Montana--I would like to remind you that the Wildlife Society is world-wide. Our concern is that in the interest of administrative expediency that you not remove the human element. This removes the chance to speak to people who come to the department. There are obvious conflicts in this bill. You don't destroy the system, you alter it. We hope your amended bill doesn't damage the commission. We oppose removal of the director's tenure, and recommend a clear cut job description of the director and commission. The welfare of tremendous issues is at stake here.

JACK COHN-----The director needs protection, but this is a unique department. F&G is supported by licensing and federal monies. I think through the Reorganization Act 82-107 (06, 07, 08) he has his directives spelled out for him. Since I was on it, the only time a director hasn't hired and fired, it was because he was too weak to do so. Has the commission ever asked to approve hirings? The sportsmen in this state deserve a say in high level hirings. I feel the people of Montana should have someone to go to, to help in decisions. These people can only make judgements from a biological point of view, and the commission looks with a humanistic touch and public input.

TAG RITTEL-Montana Outfitters and Guides Association, Wolf Creek, Montana--written statement-attachment #3.

ARNOLD REEDER, Former F&G Commissioner--I also served on the Fish and Game Committees in both the House and Senate. The politics of this is what bothers me. The last six Governors haven't really interfered with the commission; but there have been cases where pressure has been put on both the commission and the director. When the Governor couldn't get his way, he found new appointees. Most governors are either running again or running for other office. If the coal or lumber industry wants something from the Governor, they can put pressure on him. He cited an article in "Defenders of Wildlife" which felt Tom Judge to be "quite deleterious" to the state's wildlife.

HARRY MITCHELL, Great Falls, Montana--I was in the Senate, and served on the Fish and Game and State Administration Committees; and was also on the Government Reorganization Committee, so I have some knowledge of the existing law. The net effect of this weakens the independence of the commission, and makes it more responsive to special interests. I am a democrat, and did support the Governor, but I think he is making a mistake here. The commission acts as a buffer between special interest politics and the department. All you have to do to destroy the commission is to pass this. The commission will be unpopular as long as they do their job.

PHIL TAWNEY, Environmental Information Center--We have several complaints. This bill needs more time. It seems to me impossible to deal with such a drastic

revision this rapidly. This is of tremendous importance to many people over the state. We are concerned as to whether you can do justice and give the time needed. The commission is a shock absorber and it is a very real function. Having the director be responsible to the Governor could be disastrous. We want the director to have a clear line of authority.

JACK ATCHESON, Butte, Montana--I have hunted on every continent in the world except Antarctica; and Montana is the best place in the world for hunting and fishing. A bill of this magnitude being brought in so late is spooky. The administration has asked for more input, and yet this bill cuts off that input. I think if this bill isn't killed, it is a license to steal from me.

BOB YORK, Skyline Sportsmen, Butte, Montana--I urge you to kill this bill.

RALPH HOLMAN, Montana Outfitters and Guides, McLeod, Montana--Written statement attached, #4.

KEVIN GLACE, Trout Unlimited, Missoula, Montana--I understand the department is going to submit 20 pages of amendments and I wish you would consider these.

REP JOHNSTON--I see quite a bit of opposition, but I feel they are assuming a lot. I put in HB 133 to have the director serve at the pleasure of the Governor. I wanted the director's powers spelled out. The commission only meets once or twice a month. This bill will have several amendments, but the bill will go to the Senate, and over there it can be thoroughly worked over; but we must do something here if we are going to get a chain of command. DNR has a board, and this bill puts Fish and Game in the same situation.

BOB LOHN--I thank you for your consideration. The law now says that the director can hire and fire, but the commission runs the department. The director, if he does hire and fire, does so not by justifying it with the commission. The bill leaves, substantially, the powers of the commission as they are. The critical powers of the commission are not in the bill, and so still exist. The policy for the department will be made by the commission. The Governor appoints the commission now, and the director also.

JACK COHN--I have looked at the book, and we are taking 137 rights away from the commission, and returning 6.

MULAR-I refer to page 2 and the deleted language, does the Governor object to the Senate having the say so? LOHN-No, I don't believe so. MULAR-Page 4, delete "with the consideration of the Senate"? LOHN-If a vacancy occurs during the interim, 87A-112. MULAR-The policy - would you object to the insertion of "subject to the approval of the commission"? LOHN-The point that when you have a board that meets once a month for one or two days, I don't want them to have this kind of responsibility. MULAR-You aren't dividing the duties of the commission and the Governor. Page 5 - would the Governor object to the right to acquire the advice of the commission? LOHN-These have been proposed as amendments. MULAR-Page 6, lines 18-22, would you object to the same language? Strike "department" and leave "commission"? LOHN-Sure, in line 21 on page 5, we have put this language in. With this amendment, the consent of the commission would be required for anything to do with land. MULAR-Isn't it true that when you use the word "department" you are stripping the commission of any power to do with land. LOHN-(Mr. Lohn simply went over the amendments again in an effort - a polite effort - to aid Mr. Mular in understanding). KROPP-You

15

were on the commission for two years. How often did you meet? PENGELLY-Monthly. KROPP-Did the director have control over the hiring and firing then? PENGELLY-Yes. The commission would review the suggestions of the director. I felt we could approve appointments, but not suggest. These were check and balance. RYAN-The similarity between HB 791 and HB 133 disappears after line 25 on page 1. Does this accomplish what you wanted? JOHNSTON-Yes. RYAN-Was HB 133 presented due to the conflict of the two day season? JOHNSTON-We have the director that can't be removed unless he does something completely wrong. I wanted the director to have some direct responsibility and authority over the department. RYAN-This resulted from two and 14 days? JOHNSTON-Our Mule Deer population is way down, and everybody is getting pressure about it. This was where I got interested. TURNER-What has been the reason for the confrontation of biologists and sportsmen? PENGELLY-Wardens have told me that their suggestions have not been heeded. I have been in fish and game for 30 years, and this isn't true. Some of them present very poor cases. There's so much input for this. I do believe individuals have had this opportunity. TURNER-They realize they make the input but there is no response. The department already has their mind made up. PENGELLY-I first began working with the sportsmen's organizations in 1950, and right now they are at the lowest level of organization in 30 years. They need to get themselves together, and react in a more informed manner. This bill is attracting attention, but right now the sportsmen aren't very organized. I believe the untrained person should have the opportunity for input. MULAR-(page 8) Do you see local law enforcement being appointed as exofficio game wardens? Do you see some possible abuses of power here? IMMENS-You make them exofficios and put them out in the field; if they make a mistake in judgement, they are subject to suit for malicious prosecution. Essentially, anyone can make arrests, but you are most exposed. TOWER-Wouldn't it be possible for the commission itself to solve these by setting up their own chain of command? PENGELLY-No. Their powers are derived from the statutes. We never discussed anything with the Governor. The commission should be asked for input. I feel the time is too short for you to deal with this right now. HEARING CLOSED.

HB 794-JIM TURCOT-PERS-I'm here in behalf of Larry Nachsheim to answer any questions.

DICK HARGESHEIMER-This was put in by the request of PERS, and does the same thing as the teacher-' bill as far as IRS qualifications. TURCOT-We are qualifying the 6 retirement systems with IRS and conforming to provide the things required. It eliminates the possibility of disqualification.

EXECUTIVE SESSION

MULAR moved DO PASS on HB 794, the motion carried unanimously.

TOWER moved DO NOT PASS on HB 791.

KROPP-I think this does deserve some further consideration. I'm not ready to pass this. MULAR-What we saw was public input. Johnston's bill had what he wanted and then the Governor's Office sent amendments that never ended. RYAN-I feel this is a railroading job, and I'm not sure it answers Johnston's problem. The farm and ranch input wasn't here, and they should have something to say. TURNER-The ranchers were all here the other day. This wasn't any spontaneous demonstration. LIEN-We, in essence, had two hearings on this. TOWER-I think we could write a resolution to say that the commission use the powers they have. Immens showed me the codes to enable them. BARDANOUVE-I don't see why these employees should be any different from any other department. There is a division in that commission that should be dealt with. TURNER-The tenure of the director is what is bothering everybody. LIEN-I think the State Lands Department is set up with the Board serving at the pleasure of the Governor, and can hire and fire. With the Reclamation Law, the State Lands Department

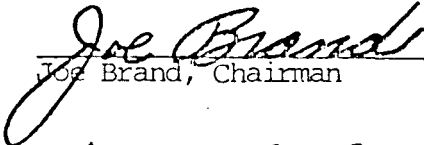
can be put under heavy pressure, and this bill puts Fish and Game in the same situation. MULAR-The State Lands Board does have the policy-making power. Robbins called QUESTION on the motion of DO NOT PASS on HB 791, the motion carried 8 - 5, with Lien, Bardanouve, Kanduch, Feda and Turner voting No.

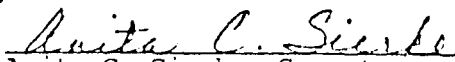
LIEN-We killed HB 788, but now Fagg wants to know if he can make a short statement on the bill. The committee ok'd the request.

HB 788-REP. FAGG-I thank you, I'm very concerned about this--the system we are currently using is not, I think, the proper way. I would like to point out that currently the institution screens three architects, and the Board of Examiners makes the final decision. Your school board selected three architects, and then sent it to the Board of Public Instruction to make the final decision. Right now it is really political. I have been up many years ago in this position. In the last session the law was changed. There were 33 architects for one job, and the Board cut it down to 6, and then sent it to the local board who cut it to 3. When I got up here a man asked me why his fraternity brother wasn't on the list because he wanted him to get the job. I have some amendments. See attachment 5. I spoke to three architects Friday, and they liked it. Whether the architects support it or not is unimportant. If we can get the Long Range Building Committee sold on the idea, it would help immensely.

SONNY HANSON-Montana Technical Council--We rose in opposition the first time because we didn't feel the bill addressed the problem fully. The Department of Administration selects from a list of three. The Board of Examiners does not select the firm. The three names are discussed ahead of time. The selection is "approved" by the Board. I think the fiscal note will be quite extensive. MULAR-Would this apply to universities? FAGG-yes.

Mr. Fagg had nothing further to add, and the hearing closed at 10:00 a.m.


Joe Brand, Chairman


Anita C. Sierke, Secretary

Chairman Brand called the meeting to order at 8:15 a.m., Menahan was excused, and Meyer was absent.

Hargesheimer submitted his summary, see attachment #1.

HB 801-Rep. Bardanouve, sponsor--The League of Cities and Towns and the local police have gotten together and worked out some comprehensive solutions. This will assure that when the present and future police officers of Montana retire, they won't face the possibility of a bankrupt fund. This will assure that there will be money available. It will abolish many local boards, and put the system into a sound administration of pension boards in PERS. It provides a mechanism for unfunded liabilities to be paid off - once these have been paid for, the fund should be in good shape. Larry Nachtsheim brought me some amendments (see attachment #2), and Mizner has one amendment. He reviewed this with me, and I agree with it. This bill has some major changes. (reference explanation in attachment #3) Page 28, line 24 - Following: "such city or town", Insert: "the funds deposited in the police reserve fund of such city or town shall not be invested in any securities or pension plans that do not guarantee the return of the principal or interest when terminated. Except the funds may be invested". When the money isn't there, the taxpayer has to come up with it. This amendment would enable the monies to be invested in banks, savings and loans, or anything that is guaranteed. No stock market speculation except through the state fund. So, I feel that it is a step in the right direction. The funds today are 20 million dollars in debt. The investment program has been involved with us in this. Consider this, and give the cities and towns a chance to catch up.

NACHTSHEIM--This bill was drafted by the League and us. I am pleased with our area of it. I have two amendments (see attachment #2). 11-189 is covered in the bill. Whenever the money exceeds \$5,000, the city shall remit the excess amount to the state for the Board of Investments.

DAN MIZNER, League of Cities and Towns--Not all policemen are with the reserve plan, so there are two funds. Monies in excess of 1% of what the state is paying are still out there.

JACK WILLIAMS, Police Chiefs' Association--We are in favor of funding the reserves. On page 2 - base salary - is this base minimum? Should this be the amount of wage rather than base? If you base this on the last 36 months, it should be clarified to exclude all those presently employed. Some police officers are on a 20 year retirement plan, and some are on a 30 year plan with 50 as the retirement age. I don't understand page 5, lines 12 through 16.

JOAN MAYER, Legislative Council Attorney--This means you can't be receiving money from any other state plan.

NACHTSHEIM--If a policeman retires and goes to another job, this would preclude him from getting any other retirement monies. BRAND--Could we get the PERS language in here. This may not decrease benefits a member has from a prior plan. HARGESHEIMER--The language shows that it applies to the whole act. NACHTSHEIM--Page 23, line 1 - the maximum should be 70% rather than 60%, and line 7 should be 2% rather than 1%. Even if everyone took advantage of this, it would save the retirement fund money, and if they stayed on for 10 years it would balance out any input. The does have a cost to the system and our intention was to straighten up the debit. I think the 36 month thing is a better instigation to stay on. They get to use a higher salary to compute their

February 22, 1977

HB 798-Tower moved DO NOT PASS; with Turner seconding, the motion carried with Robbins, Brand and Bardanouve voting no.

HB 791-Tower moved to reconsider, Feda seconded, and the motion carried. Feda proposed 3 amendments on pages 5 and 7 -- (ex.) Page 5, line 6 - Following: "may"; Strike: "acquire,". The motion to amend carried.

Feda moved AS AMENDED DO PASS, which was seconded by Kropp.

RYAN-This is a people bill, not an acquisition bill. We are attempting to solve an argument between people who can't solve their own problems. I don't think this bill addresses the needs of the people in the field. There's a possibility that further examination could get rid of the problem with middle management. TURNER-HJR 15 will help this. The administration of secondary employees would not be addressed in this bill. BRAND-There is a problem of the department not having any executive power. RYAN-A simpler way to solve this would be a good Public Relations man; and bring these problems to a focus. BRAND-Yes, but this bill provides for accountability. KANDUCH-The last session, we had a resolution for a good PR man, and nothing ever happened. KROPP-The way it is now, the commission has some local input.

Feda's motion carried 11 - 1, with Ryan voting no.

HB 788-Lien moved to reconsider, which carried. Lien moved that the amendments presented by Rep. Fagg be adopted - see attachments 4 and 5 - the motion carried. Kropp moved AS AMENDED DO PASS, and the motion carried with Brand voting no.

HB 771-O'Connell moved to reconsider and hold, which carried.

HJR 58-Lien moved the proposed amendments for page 2, line 4; which carried. Turner moved AS AMENDED DO PASS, seconded by Feda; the motion carried with Brand and Ryan voting no.

MEETING ADJOURNED - 10:10 a.m.

Joe Brand, Chairman

Anita C. Sierke
Anita C. Sierke, Secretary

COMMITTEE ON State Administration

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
396	2-25-77	rereferred to Judiciary 3-4-77							
223	4-9-77	not accepted by the Senate for action - put in our committee until end of session							
808	4-7-77	4-11-77	4-12-77				4-11-77		
565	2-25-77	3-19-77	3-19-77					3-19-77	
352	2-25-77	rerererred to Judiciary 3-4-77							
447	2-25-77	3-28-77	4-2-77				4-2-77		
719	2-25-77	3-21-77	3-31-77					3-25-77	
741	2-25-77	3-21-77	3-28-77				3-25-77		
765	2-25-77	3-21-77	3-28-77				3-25-77		
745	3-2-77	3-21-77	3-31-77					3-25-77	
804	3-2-77	3-21-77	3-21-77				3-21-77		
213	3-2-77	3-23-77	4-13-77						4-13-77
297	3-2-77	3-23-77	4-1-77				4-1-77		
788	3-2-77	3-23-77	4-4-77					4-2-77 Without Recommend.	
794	3-2-77	3-25-77	3-28-77				3-25-77		
791	3-5-77	3-26-77	3-30-77				3-30-77	and transfer to Fish & Game	
795	3-5-77	3-26-77	4-1-77					3-30-77	

MINUTES OF THE MEETING
SENATE STATE ADMINISTRATION COMMITTEE
MARCH 26, 1977

The meeting was called to order by Senator Towe, Chairman, at 8:00 a.m. in the Governor's Reception Room of the Capitol Building. Committee members present were Senators Towe, Story, Devine, Blaylock, Jergeson, Roskie and Rasmussen. Senator Brown was excused.

The following bills were discussed: HB 791

HB 795

HB 791 Representative George Johnston, District 13, stated he had introduced the bill at the request of the House State Administration Committee. He stated he had introduced HB 133 but its provisions were not broad enough so this bill was drawn up to include the department carrying out the functions of the department; the Director is in charge of personnel hiring and firing; the Commission retains their functions, and personnel has the right to appeal to the Labor Appeal Board rather than the Commission.

Proponents

Bob Lohn, staff attorney representing the Governor, stated the bill brings the Commission up to date and draws the line between functions of the department, the director, the Commission and the

personnel. The Director will serve as any other department director and at the pleasure of the Governor.

Mons Tiegen, representing the Montana Stockgrowers Association, stated they support the bill in its present form as it will help resolve many past problems.

Bob Gilbert, representing Montana Woolgrowers Association, spoke in favor of the bill.

Peter Jackson, representing the Western Environmental Trade Association, supported the bill.

Bill Asher, representing the Agricultural Preservation Association, urged full support of the bill.

Opponents

Jack Cohn, sportsman, farmer and Fish and Game Commissioner, gave a brief history of the bill. After having two attorneys check the bill they determined it takes away 125 rights of the Commission as well as the whole checks and balance system between the Commission and the Director. He also noted the game warden qualifications had been stricken.

Gary Stuker, representing Hill County Wildlife Association, stated definite guidelines are needed for the director and the commissioners need some teeth but have been stripped of them.

27

There were no further proponents or opponents and Representative Johnston closed by stating he had met with the five commissioners and they had approved the bill. He felt under the present law the Director is no more than a secretary to the commissioners.

Questions by Committee

Senator Blaylock asked what the bill really does. Mr. Lohn answered it give clear administrative control within the department to the director and defines the responsibilities of the commission-- that being a shift of power of sorts but only in defining function.

There being no further questions, the hearing was closed.

HB 795 Representative Bardanouve, sponsor of the bill, stated the bill is the result of concern over the recall initiative that passed in the general election. It was passed by over 40,000 votes which certainly makes it a mandate of the people and the people who worked on it should be commended, however its definitions are ambiguous and it does not clarify or conform to present law.

He further stated the law does provide for amending an initiative measure. It has been thoroughly researched

MINUTES OF THE MEETING
SENATE STATE ADMINISTRATION COMMITTEE
MARCH 30, 1977

The meeting was called to order by Senator Towe, Chairman, at 11:00 a.m. in Room 410 of the Capitol Building. Committee members present were Senators Towe, Story, Brown, Jergeson, Roskie, and Blaylock.

The following bills were discussed:

- SJR 46
- HB 229
- HJR 34
- HB 791
- HJR 85
- HB 506
- HB 566
- HB 493
- HB 302

SENATE JOINT RESOLUTION 46

Senator Story assumed the chair to allow Senator Towe to present the bill.

Senator Towe, District 34, sponsor of the resolution, stated the purpose of the bill is to express concern about the overlap of functions and the duplication of services and therefore extra expense in state agencies which deal with protective services. It requests the committee on priorities to designate the appropriate standing committee to study the makeup of the agencies delivering services to and protecting through advocacy and appeal processes the rights of persons and recommend alternative structured to alleviate the deficiencies found. He stated such areas as Developmental Disabilities, Family Planning, Senior Citizens, Human Rights, Womens Bureau, Board of Visitors as a few examples, are in need of independence from the agencies which they must review or deal with.

PROPOSERS

Ann Mary Dussault, Representative, District 95, spoke in support of the bill especially the section dealing with advocacy functions

There being no further proponents and no opponents, the hearing was closed.

Senator Roskie moved Senate Joint Resolution 46 Be Adopted. THE MOTION CARRIED UNANIMOUSLY.

Senator Towe assumed the Chair.

HOUSE BILL 229

The Chairman stated Representative Gerke, sponsor of the bill, indicated to him the bill should be tabled as it was predicated on House Bill 122 which did not pass.

Senator Blaylock moved House Bill 229 Be Tabled. THE MOTION CARRIED

24

UNANIMOUSLY.

HOUSE JOINT RESOLUTION 34

Representative Driscoll, District 91, sponsor of the bill, stated the bill is a companion measure to House Bill 808 which is now in the House Appropriations Committee. The resolution urges the Governor to appoint an ad hoc committee to prepare legislation for submission to the 46th Legislature to implement the public funding of campaigns in Montana.

There were no opponents and no proponents to the bill and the hearing was closed.

Senator Blaylock moved House Joint Resolution 34 Be Concurred In. THE MOTION CARRIED WITH SENATOR STORY VOTING NO.

HOUSE BILL 791

Senator Story moved House Bill 791 Be Concurred In and transferred to the Fish and Game Committee. THE MOTION CARRIED WITH SENATORS BLAYLOCK AND JERGESON VOTING NO.

HOUSE JOINT RESOLUTION 85

The resolution had already been passed but the opportunity was to be extended to the absent committee members to vote on the bill. Senators Towe and Jergeson voted yea and the bill was to be sent out of committee.

HOUSE BILL 506

The only discussion of the bill was as to who would carry it on the floor and Senator Blaylock agreed to carry the bill.

HOUSE BILL 566

The bill had been voted on and the motion to be concurred in had failed. A vote not to concur had not been taken and the bill was being held for that action. Senator Roskie moved House Bill 566 Be Not Concurred In. THE MOTION CARRIED WITH SENATORS JERGESON, TOWE, AND BLAYLOCK VOTING NO.

HOUSE BILL 493

Senator Roskie moved the amend the bill as per the attached committee report. THE MOTION CARRIED UNANIMOUSLY.

Senator Story moved House Bill 493 Be Concurred In As Amended. THE MOTION CARRIED UNANIMOUSLY.

HOUSE BILL 302

Senator Brown moved to amend the bill as per amendments #1, 7, 9 and 10 on the standing committee report attached the the March 30 afternoon meeting minutes. THE MOTION CARRIED UNANIMOUSLY WITH SENATOR RASMUSSEN ABSTAINING.

V

MINUTES

FISH AND GAME COMMITTEE

MONTANA STATE SENATE

April 4, 1977

The twenty-sixth meeting of the Fish and Game Committee was called to order by Chairman Dunkle at 8:30 A.M., in Room 405 of the State Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF HB 791, an act to make the Department head of the Department of Fish and Game a Director appointed by the Governor; to remove certain qualifications for the Director of the Department of Fish and Game; to re-allocate certain functions of the State Fish and Game Commission to the Department of Fish and Game; to state the powers of the State Fish and Game Commission; to provide a grievance procedure for employees of the Department of Fish and Game, and to change the name of the State Fish and Game Commission, along with providing an immediate effective date.

Representative George Johnston, speaking for the State Administration Committee which sponsored the bill, spoke, saying this piece of legislation started out as HB 133. He said the bill was intended to enhance the honesty of the Department of Fish and Game.

Mr. Robert Lohn, Governor's Staff Attorney, spoke in support of the bill. He said the bill has, for the purposes of consistency, created a new section in an attempt to draw a distinction between the director, who works on a day-to-day basis, and the commission.

Mr. Peter Jackson spoke in support of the bill, saying he objected to red tape. He said at the present time, no one knows who is in charge, and this bill will organize the department and let the people know the chain of command.

Chairman Dunkle asked if there were any other proponents or opponents who wished to speak on the bill. There were none. Chairman Dunkle then opened the hearing to discussion.

Senator Galt asked if the director would serve at the pleasure of the governor, and Mr. Lohn said he would.

Senator Lensink asked about the difference between this and the old law. Representative Johnston said under the proposed legislation, the director of the Fish and Game Department would be in charge of personnel.

Senator Lowe asked how the bill could improve land-owner-sportsman relations. Representative Johnston replied it would make the director of the department more responsive to the people of Montana.

Mr. Wes Woodgerd of the Montana Fish and Game Department said he supported the bill, since it would make the commission in more of a policy setting position.

Senator Dunkle mentioned the consent of the Senate for appointments. He wanted to be assured that the Governor couldn't simply not send up names for reappointment and would end up with five of his own people on the commission. Mr. Lohn said he would check on it.

Senator Lowe asked if the commissioners can be removed if they disagree with the Governor. Debbie Schmidt, Legislative Council Researcher, said they are members of a quasi judicial board, and that all such members may be removed only for cause.

Mr. Orville Lewis of the Montana Fish and Game Department testified, saying the bill will accomplish some things that are long overdue, and that it will clarify the role of the director in comparison with the role of the commission.

Senator Dunkle asked Representative Johnston to close. He stated he felt the department would operate better if the bill were to pass, and that it would improve relations with landowners.

Senator Dunkle reviewed with the committee some proposed amendments to the bill. (Attachments #1).

Mr. Woodgerd mentioned Section 26-119 concerning contracts. He stated that a bid under \$1,000 may be negotiated by the department without bids. Mr. Woodgerd said that bids between \$1,000 and \$5,000 must be advertised by the department for bids. He also said that in HB 791, bids that exceed \$5,000 are not the prerogative of the director or the commission, and must be let through the Department of Administration.

It was suggested by Mr. Woodgerd that on page 20, a seventh item could be added that would state that the commission would "review and approve construction projects whose

27

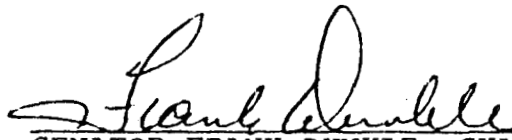
estimated cost is more than \$1,000 but less than \$5,000."

Representative Johnston said he would endorse this amendment.

Senator Dunkle asked if there were any other questions. Senator Manley said he would like to review the bill further before making any decision on it.

Senator Dunkle closed the hearing at 9:10 A.M., and announced that he would notify Representative Johnston when the bill is considered in Executive Session.

ADJOURNMENT: Chairman Dunkle adjourned the meeting at 9:20 A.M.


SENATOR FRANK DUNKLE, CHAIRMAN

MINUTES
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

April 6, 1977

The twenty-seventh meeting of the Fish and Game Committee was called to order by Chairman Dunkle at 8:00 A.M., in Room 405 of the State Capitol Building, in Executive Session.

ROLL CALL: All members were present, with the exception of Senators Warden and Galt, who were excused.

CONSIDERATION OF HB 791, an act to make the Department head of the Department of Fish and Game a Director appointed by the Governor; to remove certain qualifications for the Director of the Department of Fish and Game; to re-allocate certain functions of the State Fish and Game Commission to the Department of Fish and Game; to state the powers of the State Fish and Game Commission; to provide a grievance procedure for employees of the Department of Fish and Game, and to change the name of the State Fish and Game Commission, along with providing an immediate effective date.

The proposed amendments were distributed and discussed. (Attachment #1).

Senator Lowe made a motion to adopt the amendments presented. Senator Bergren seconded the motion and it passed unanimously.

Senator Dunkle asked for questions. Senator Manley questioned game ranges and game farms, and Senator Dunkle said that section was untouched.

DISPOSITION OF HB 791: Senator Manley made a motion that HB 791 BE CONCURRED IN, AS AMENDED. The motion was seconded by Senator Lowe and passed unanimously.

Senator Manley requested a more detailed budget of the Montana Department of Fish and Game, saying he wanted to

know exactly where the money comes from.

Senator Dunkle said he would carry the bill on the floor.

Senator Dunkle wanted it recorded that the proposed amendments of Mr. Jack Cohn were presented, and the committee did not want to consider them.

DISCUSSION OF FISH AND GAME DEPARTMENT BUDGET:

Senator Manley wanted to know just what general fund money goes to the department, along with what taxes, etc. from parks and recreation areas go to them.

Senator Dunkle asked Legislative Researcher Debbie Schmidt to find out the cost of the department magazine and ask for the Education and Information budget figures which will indicate film production.

Senator Lowe asked that the Sportsman's License income be included in the report.

Senator Bergren requested the budget for the Fisheries Division.

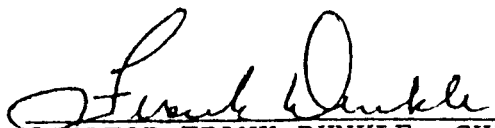
Senator Manley said if the Fish and Game Department is using taxpayers' money, it should not be biased.

Debbie Schmidt suggested that the Fiscal Analyst be present when the committee discusses the budget.

Senator Manley requested that the committee have this information several days in advance of the meeting for review.

Debbie Schmidt agreed to obtain all of the budget information requested, including information on the last biennium, and money spent for the purchase of land, which Senator Manley indicated he would like.

ADJOURNMENT: There being no further business, Chairman Dunkle adjourned the meeting at 8:50 A.M.


SENATOR FRANK DUNKLE, CHAIRMAN

April 6, 1977

STANDING COMMITTEE REPORT
Senate Committee on Fish & Game

That House Bill No. 791 be amended as follows:

1. Amend page 9, section 7, line 18.
Following: "Department"
Insert: "and commission"
2. Amend page 9, section 7, line 21.
Following: "department"
Insert: ", with the consent of the commission"
3. Amend page 9, section 7, line 23.
Following: "authority"
Strike: "of"
Insert: "or"
4. Amend page 10, section 7, line 1.
Following: "department"
Insert: ", with the consent of the commission"
5. Amend page 10, section 7, line 11.
Following: "department."
Strike: "The"
Insert: "Upon concurrence of the commission, the"
6. Amend page 10, section 7, line 20.
Following: "department"
Insert: ", with the consent of the commission"
7. Amend page 20, section 16, line 17.
Following: " ; "
Strike: "and"
8. Amend page 20, section 16, line 19.
Following: "office"
Strike: "."
Insert: "; and"
9. Amend page 20, section 16, line 20.
Following: line 19
Insert: "(7) review and approve construction projects whose estimated cost is more than \$1,000 but less than \$5,000."

STANDING COMMITTEE REPORT

April 6,

1977

PRESIDENT

MR.

FISH AND GAME

We, your committee on

having had under consideration HOUSE Bill No. 791

Respectfully report as follows: That HOUSE Bill No. 791,

third reading bill, be amended as follows:

1. Amend page 9, section 7, line 18.

Following: "Department"

Insert: "and commission"

2. Amend page 9, section 7, line 21.

Following: "department"

Insert: ", with the consent of the commission"

3. Amend page 9, section 7, line 23.

Following: "authority"

Strike: "of"

Insert: "or"

XXXXXX

House Bill 791, continued
Page two

4. Amend page 10, section 7, line 1.

Following: "department"

Insert: ", with the consent of the commission"

5. Amend page 10, section 7, line 11.

Following: "department."

Strike: "The"

Insert: "Upon concurrence of the commission, the"

6. Amend page 10, section 7, line 20.

Following: "department"

Insert: ", with the consent of the commission"

7. Amend page 20, section 16, line 17.

Following: ";"

Strike: "and"

8. Amend page 20, section 16, line 19.

Following: "office"

Strike: "."

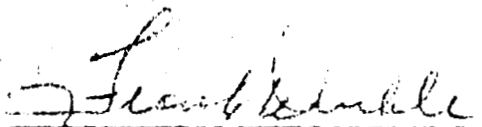
Insert: "; and"

9. Amend page 20, section 16, line 20.

Following: line 19

Insert: "(7) review and approve construction projects whose estimated cost is more than \$1,000 but less than \$5,000."

AND AS SO AMENDED, BE CONCURRED IN


SENATOR FRANK DUNKLE, CHAIRMAN

PROPOSED AMENDMENTS TO HB 791

Amend third reading copy as follows:

1. Amend page 9, section 7, line 18.

Following: "Department"

Insert: "and commission"

2. Amend page 9, section 7, line 21.

Following: "department"

Insert: ", with the consent of the commission"

3. Amend page 9, section 7, line 23.

Following: "authority" ?

Strike: "of"

Insert: "or"

4. Amend page 10, section 7, line 1.

Following: "department"

Insert: ", with the consent of the commission"

5. Amend page 10, section 7, line 11.

Following: "department."

Strike: "The"

Insert: "Upon concurrence of the commission, the"

6. Amend page 10, section 7, line 20.

Following: "department"

Insert: ", with the consent of the commission"

7. Amend page 20, section 16, line 17.

Following: " ; "

Strike: "and"

8. ~~Amend~~ page 20, section 16, line 19.

Following: "office"

Strike: "."

Insert: "; and"

9. Amend page 20, section 16, following line 19.

Insert: "(7) review and approve construction projects whose estimated cost is more than \$1,000 but less than \$5,000."

DEPARTMENT OF FISH AND GAME

	Wildlife Program		Fish Program		Parks & Recreation		Administration	
	<u>FY-78</u>	<u>FY-79</u>	<u>FY-78</u>	<u>FY-79</u>	<u>FY-78</u>	<u>FY-79</u>	<u>FY-78</u>	<u>FY-79</u>
Personal Services	\$3,414,049	\$3,510,975	\$2,461,873	\$2,503,581	\$1,268,873	\$1,267,990	\$113,507	\$115,323
Contracted Services	480,627	500,061	380,349	408,648			18,070	19,907
Supplies & Materials	239,776	255,735	282,498	311,676			1,804	2,026
Communications & Transp.	204,541	253,591	72,434	92,726			2,440	3,220
Travel	718,020	788,310	447,544	508,053			19,780	22,748
Rent	288,245	301,486	79,963	85,054			9,460	10,346
Utilities	42,261	49,182	45,150	53,942				
Repairs & Maintenance	92,031	101,426	60,142	68,499			247	301
Other Expenses	96,813	92,348	28,633	28,227			2,150	2,150
Total Operating Exp.	2,162,314	2,342,139	1,396,713	1,556,825	594,017	702,311	53,951	60,698
Equipment	109,861	100,091	107,297	90,800	26,858	30,084		
Total Operating Costs	5,686,224	5,953,205	3,965,883	4,151,206	1,889,748	2,000,385	167,458	176,021
Capital Outlay	338,912	68,461						
Grants	213,370	216,840	16,000	16,000				
TOTAL PROGRAM	\$6,238,506	\$6,238,506	\$3,981,883	\$4,167,206	\$1,889,748	\$2,000,385	\$167,458	\$176,021

*Not more detailed
budget*

Jack P. ...

HOUSE BILL 791

1. Amend page 1, title, line 15.
Change: "26-107" to "26-109"
2. Amend page 2, title, line 8
Strike: "26-106,"
3. Amend page 7, Section 5, lines 22 through 25.
Strike: lines 22 through 25 in their entirety
4. Amend page 8, Section 5, lines 1 through 19.
Strike: lines 1 through 19 in their entirety
5. Amend page 18, Section 13, line 10.
Strike: "26-108,"
6. Amend page 19, Section 15, line 24.
Strike: "26-106,"

HOUSE BILL 791

1. Amend page 5, Section 4, line 8.
Following: "CONSENT"
Insert: "AND APPROVAL"
2. Amend page 5, Section 4, line 11.
Following: "department"
Insert: ", with the consent and approval of the
commission,"
3. Amend page 6, Section 4, line 2.
Following: "CONSENT"
Insert: "AND APPROVAL"
4. Amend page 7, Section 4, line 12.
Following: "CONSENT"
Insert: "AND APPROVAL"

HOUSE BILL 791

1. Amend page 1, title, line 14.
Strike: "26-104,"
2. Amend page 1, title, line 16.
Strike: "26-121,"
3. Amend page 18, Section 13, line 10.
Strike: "26-104,"
4. Amend page 18, Section 13, line 11.
Strike: "26-121,"

HOUSE BILL NO. 791

INTRODUCED BY STATE ADMINISTRATION COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE THE DEPARTMENT HEAD OF THE DEPARTMENT OF FISH AND GAME A DIRECTOR APPOINTED BY THE GOVERNOR IN ACCORDANCE WITH SECTION 82A-106, R.C.M. 1947; TO REMOVE CERTAIN QUALIFICATIONS FOR THE DIRECTOR OF THE DEPARTMENT OF FISH AND GAME; TO REALLOCATE CERTAIN FUNCTIONS OF THE STATE FISH AND GAME COMMISSION TO THE DEPARTMENT OF FISH AND GAME; TO STATE THE POWERS OF THE STATE FISH AND GAME COMMISSION; TO PROVIDE A GRIEVANCE PROCEDURE FOR EMPLOYEES OF THE DEPARTMENT OF FISH AND GAME; AND TO CHANGE THE NAME OF THE STATE FISH AND GAME COMMISSION; AMENDING SECTIONS 26-101.1, 26-104, 26-104.4 THROUGH 26-104.7, 26-107 THROUGH 26-110, 26-110.3, 26-114, 26-118, 26-119, 26-121, 26-123, 26-126 THROUGH 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1, 26-202.4 THROUGH 26-202.8, 26-204, 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225, 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324, 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911 THROUGH 26-915, 26-918 THROUGH 26-920, 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206 THROUGH 26-1208, 26-1210, 26-1402, 26-1403, 26-1502 THROUGH 26-1505,

26-1508, 26-1509, 26-1601 THROUGH 26-1603, 26-1605, 26-1607 THROUGH 26-1610, 26-1612 THROUGH 26-1614, 26-1701, 26-1702, 26-1704, 26-1802, 26-1804 THROUGH 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304 THROUGH 62-306, 62-308, 62-310, 62-311, 62-314, 62-401 THROUGH 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518, 75-5205, 82A-2001, 82A-2004, 89-3405, 89-3407, AND 89-3449, R.C.M. 1947; ~~AND REPEALING SECTIONS 26-103, 26-106, 26-124, AND 82A-2003, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82A-2001, R.C.M. 1947, is amended to read as follows:

"82A-2001. Department of fish and game -- creation -- head. There is created a department of fish and game. The department head is the ~~state--fish--and--game--commission~~ ~~provided--for--in--section--82A-2004--of--this--chapter--but~~ ~~section-82A-107-of-this-act-does-not-apply-to-the-commission~~ ~~as-a-department-head~~ director of fish and game appointed by the governor in accordance with 82A-106. THE DIRECTOR IS THE SECRETARY OF THE COMMISSION."

Section 2. Section 82A-2004, R.C.M. 1947, is amended to read as follows:

"82A-2004. State-fish Fish and game commission --

REFERENCE BILL

composition -- qualifications -- designation. (1) There is a state fish and game commission.

(2) The commission consists of five ~~five~~ members. At least one member shall be experienced in the breeding and management of domestic livestock. The governor shall appoint one ~~one~~ member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweetgrass counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie counties.

(3) Appointments shall be made without regard to political affiliation and shall be made solely for the welfare of the fish, game, and wildlife of this state. A

person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish and game, and the requirements for the conservation and protection of fish, game, and game birds and animals.

(4) A vacancy occurring on the commission shall be filled by the governor ~~with the consent of the senate~~ in the same manner and from the district in which the vacancy occurs.

(5) The state fish and game commission is designated as a quasi-judicial board for purposes of ~~section 82A-112 of this act.~~

~~for in addition to its designation as a quasi-judicial board, the commission is the policy and rule making body for the department except where the department has been specifically delegated rule making authority. The commission shall carry out such other duties as specified by law.~~

Section 3. Section 26-101.1, R.C.M. 1947, is amended to read as follows:

"26-101.1. Definitions. Unless the context requires otherwise, in Title 26 the following definitions apply:

(1) "Department" means the department of fish and game provided for in Title 82A, chapter 20.

(2) "Director" means the director of fish and game provided for in section ~~82A-2003~~, 82A-2001.

(3) "Warden" means a state fish and game warden.

(4) "Commission" means the state fish and game commission provided for in section 82A-2004."

Section 4. Section 26-104.6, R.C.M. 1947, is amended to read as follows:

"26-104.6. Acquisition and sale of lands or waters by commission department. (1) The ~~commission department, WITH THE CONSENT OF THE COMMISSION,~~ may acquire by purchase, condemnation, lease, agreement, gift, or devise, and may acquire easements upon lands or waters for the purposes listed in this subsection. The ~~commission department~~ may ~~acquire,~~ develop, operate, and maintain acquired lands or waters:

(a) ~~For~~ ~~for~~ fish hatcheries, nursery ponds, or game farms;

(b) ~~As~~ ~~as~~ lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) ~~For~~ ~~for~~ public hunting, fishing, or trapping areas;

(d) ~~To~~ ~~to~~ capture, propagate, transport, buy, sell, or exchange any game, bird, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species;

(e) ~~To~~ ~~to~~ extend and consolidate by exchange, lands or

waters suitable for these purposes.

(2) The ~~commission department, WITH THE CONSENT OF THE COMMISSION,~~ may dispose of lands and waters acquired by it on those terms after that public notice, and without regard to other laws which provide for sale or disposal of state lands, and with or without reservation, as it considers necessary and advisable. Notice of sale describing the lands or waters to be disposed of shall be published once a week for ~~three-~~~~(3)~~ successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated, or if no newspaper is published in that county then in any newspaper with general circulation in that county. The notice shall advertise for cash bids to be presented to the ~~commission-or-the~~ director within ~~thirty-~~~~(30)~~ days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to ~~ten-~~~~percent~~ ~~(10%)~~ of the amount bid. The highest bid shall be accepted upon payment of the balance due within ~~ten-~~~~(10)~~ days after mailing notice by registered mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification. The ~~commission department~~

1 shall reserve the right to reject any bids which do not
 2 equal or exceed the full market value of the lands and
 3 waters as determined by the commission department. The
 4 commission department shall convey the lands and waters by
 5 deed without covenants of warranty, executed by the
 6 governor, or in his absence or disability by the lieutenant
 7 governor, attested by the secretary of state, and further
 8 countersigned by the ~~chairman-of-the-commission~~ director.
 9 ~~The deed shall be attested by the secretary of the~~
 10 ~~commission, but need not be acknowledged.~~

11 (3) Notwithstanding the provisions of section 82-1918,
 12 ~~R.C.M. 1947, the commission department, WITH THE CONSENT OF~~
 13 THE COMMISSION, is authorized to utilize the installment
 14 contract method to facilitate the acquisition of wildlife
 15 management areas, in which game and nongame fur-bearing
 16 animals, and game and nongame birds may breed and replenish,
 17 and areas which provide access to fishing sites for the
 18 public. In no case may the total cost of such installment
 19 contracts exceed the cost of purchases authorized by
 20 commission the department and appropriated by the
 21 legislature."

22 Section 5. Section 26-107, R.C.M. 1947, is amended to
 23 read as follows:

24 "26-107. State fish and game wardens -- appointment --
 25 qualifications. The director, ~~by and with the consent and~~

1 ~~approval--of--the-commission~~ shall have the power to employ
 2 and appoint a deputy director, and a sufficient number of
 3 state fish and game wardens for the proper enforcement of
 4 the fish and game laws of the state, and the orders, rules
 5 and regulations of the commission department, and for such
 6 other purposes as the director may designate. State fish and
 7 game wardens shall be selected from applicants who have
 8 passed such an examination as may be required according to
 9 the rules adopted and promulgated by the commission
 10 department. No person shall be appointed a state fish and
 11 game warden until a certificate shall have been issued to
 12 him by the commission department to the effect that he has
 13 passed the required examination and is a fit and proper
 14 person to perform the duties of the office. State fish and
 15 game wardens employed and appointed by virtue of this act
 16 shall be persons who have an interest in protection,
 17 conservation and propagation of wildlife, game and
 18 fur-bearing animals, fish and game birds; they shall devote
 19 all of their time to their official duties."

20 Section 6. Section 26-114, R.C.M. 1947, is amended to
 21 read as follows:

22 "26-114. Appointment of ex officio state fish and game
 23 wardens. All sheriffs and their deputies, constables, all
 24 peace officers of the state, or any subdivision thereof, and
 25 all state forest officers, and such other officers of the

1 United States forest service or agents of the United States
 2 fish and wildlife service which are assigned to duty in this
 3 state, and field personnel ~~fish-and-game-commission of the~~
 4 ~~department~~, as the director, ~~with the approval of the state~~
 5 ~~fish-and-game-commission~~, may appoint are hereby made ex
 6 officio state fish and game wardens, without pay, except
 7 that the ~~commission department~~ may, in its discretion, allow
 8 traveling expenses, as provided for in sections 59-538,
 9 59-539, and 59-801, which, if allowed, shall be paid upon
 10 proper vouchers from the state fish and game funds ~~and~~. Ex
 11 ~~officio state fish and game wardens~~ shall have the same
 12 powers with reference to the enforcement of the fish and
 13 game laws of this state as regularly appointed state fish
 14 and game wardens, and it is hereby made their duty to
 15 assist, whenever possible, in the enforcement of said laws."

16 Section 7. Section 26-119, R.C.M. 1947, is amended to
 17 read as follows:

18 "26-119. ~~Fish-and-game-commission Department AND~~
 19 ~~COMMISSION~~ to procure plans for construction projects. It
 20 shall be the duty of the ~~state-fish-and-game-commission-of~~
 21 ~~the-state-of-Montana department, WITH THE CONSENT OF THE~~
 22 ~~COMMISSION~~ to procure suitable plans and specifications for
 23 any construction project under its authority of ~~OR~~ under
 24 authority of the state legislature, when the estimated value
 25 or cost of the same shall be more than ~~one-thousand-dollars~~

1 ~~(\$1,000)~~ but less than ~~five-thousand-dollars-(\$5,000)~~ and
 2 ~~said-commission the department, WITH THE CONSENT OF THE~~
 3 ~~COMMISSION~~ shall cause said project to be constructed, but
 4 in accordance with such plans and specifications, by
 5 contract, said contract to be let after publishing a notice
 6 stating the time and place of letting the same, and where
 7 plans and specifications may be seen. ~~Said-notice Notice~~
 8 shall be published not less than once a week for ~~two-(2)~~
 9 weeks prior to the time of letting such contract, in some
 10 newspaper of general circulation in the county in which said
 11 project is to be constructed, and elsewhere if deemed best
 12 by ~~said-commission-and-said-commission the department, the~~
 13 ~~UPON CONCURRENCE OF THE COMMISSION, THE department, if not~~
 14 satisfied with the bids received, or for any other reason,
 15 may reject any and all bids received and readvertise as
 16 often as may be necessary. Only one bid need be received and
 17 the contract shall be let to the lowest responsible bidder.
 18 Any person to whom a contract may be given shall be required
 19 to give a good and sufficient bond, conditioned for the
 20 faithful performance and completion of such contract, the
 21 same to be approved by the ~~commission-or-some-member-of-the~~
 22 ~~commission department, WITH THE CONSENT OF THE COMMISSION.~~
 23 The ~~commission department~~ may contract for construction
 24 projects estimated to cost ~~one-thousand-dollars-(\$1,000)~~ or
 25 less without providing for plans or specifications, notice,

53

1 competitive bidding or performance bonds."

2 Section 8. Section 26-918, R.C.M. 1947, is amended to
3 read as follows:

4 "26-918. Grounds for suspension or revocation of
5 license. Every license, or right to apply for and hold such
6 license, may be suspended or revoked ~~by the fish and game~~
7 ~~commission~~ upon any of the following grounds:

8 (1) Having ceased to meet all of the qualifications
9 for holding a license.

10 (2) Fraud or deception in procuring a license.

11 (3) Fraudulent, untruthful or misleading advertising.

12 (4) Conviction of a felony, until civil rights are
13 restored or until time of any deferred sentence for a felony
14 has expired.

15 (5) Two ~~(2)~~ convictions, or bond forfeitures, of one
16 ~~hundred dollars (\$100)~~ or more as to violations of the fish
17 and game or outfitting laws or regulations of the state of
18 Montana or of the United States.

19 (6) A substantial breach of any contract with any
20 person utilizing the services of the license holder provided
21 that such breach is established as a matter of final
22 judgment in a court of law.

23 (7) The willful employment of an unlicensed guide by
24 an outfitter.

25 (8) Negligence or misconduct while acting as an

1 outfitter or guide which negligence or misconduct causes a
2 danger or unreasonable risk of danger to person or property
3 of any client of such outfitter or guide."

4 Section 9. Section 26-919, R.C.M. 1947, is amended to
5 read as follows:

6 "26-919. Procedure for revocation or suspension of
7 license. Proceedings for the revocation or suspension of a
8 license issued hereunder may be taken upon charge or
9 recommendation of any person. All such charges or
10 recommendations must be made in writing, must state the
11 facts upon which such charge or recommendation is based and
12 must be signed and sworn to by the person making the charge
13 or recommendation. Any such charge or recommendation shall
14 be filed with the fish and game director. Thereupon, the
15 fish and game director shall initiate a preliminary
16 investigation of all facts in connection with the charge. A
17 copy of all information shall be transmitted to the advisory
18 council. The advisory council may make recommendation as to
19 the action to be taken provided that any such recommendation
20 shall be made, in writing and delivered to the director,
21 within ~~twenty--(20)~~ days after date of transmittal of such
22 information to the council. If the accusation be deemed to
23 be unfounded or trivial, the fish and game director shall
24 dismiss the same ~~and report his action to the fish and game~~
25 ~~commission~~ and will advise the licensee charged and the

1 complaining party of the action. Should the fish and game
 2 director determine the charge or recommendation to have good
 3 cause and to be sufficiently founded, he shall recommend to
 4 the fish and game commission that the same be approved and
 5 the revocation or suspension be effected. The fish and game
 6 director thereupon shall cause a copy of the charge,
 7 recommendation of the council, and a record of the
 8 investigation to be served upon the licensee involved, not
 9 less than ~~twenty~~(20) days prior to the day set for hearing
 10 thereon which said hearing shall be before the fish and game
 11 commission at a time and place set by such commission. At
 12 the hearing the licensee involved may be represented by
 13 counsel. After full, fair and impartial hearing, the fish
 14 and game commission may suspend the accused's license or his
 15 right to hold a license for a period not to exceed ~~three~~(3)
 16 years or may order the license revoked or may dismiss the
 17 charge or recommendation based upon the facts shown at the
 18 hearing. A revoked or suspended license may be reissued or
 19 reinstated at the discretion of the commission."

20 Section 10. Section 26-920, R.C.M. 1947, is amended to
 21 read as follows:

22 "26-920. Appeal to district court. Any person who
 23 feels aggrieved by ~~any action of the director in denying~~
 24 the denial of issuance of a license, or of ~~the fish and~~
 25 ~~game commission in suspending or revoking his suspension or~~

1 revocation of a license as an outfitter or guide, may appeal
 2 to the district court of the county of his residence, within
 3 ~~thirty~~(30) days after the date of such action by filing
 4 with the clerk of said court a notice of appeal briefly
 5 setting forth the action complained of and appealed from.
 6 Summons and copy of the notice of appeal shall be served on
 7 the commission and all proceedings shall conform to the code
 8 of civil procedure of the state of Montana. Upon such
 9 appeal, the action shall be by trial de novo and, upon
 10 demand in writing, either party shall be entitled to trial
 11 by jury. The court may sustain or reverse the action of the
 12 commission or take such other action as the court may deem
 13 just and proper. If the commission or the court has ordered
 14 a stay of any revocation or suspension and the commission's
 15 revocation or suspension is thereafter sustained by the
 16 court the period of suspension or revocation shall begin
 17 with the first day after the court's action sustaining the
 18 decision of the commission."

19 Section 11. Section 26-1508, R.C.M. 1947, is amended
 20 to read as follows:

21 "26-1508. Reports and objections to federal actions
 22 injuring fish and wildlife -- files and records. The Montana
 23 state fish and game department shall observe ~~and report to~~
 24 ~~the Montana state fish and game commission concerning~~ acts
 25 and omissions on the part of the government of the United

1 States and its agencies within the state of Montana which
 2 do, will or might affect adversely the fish and wildlife
 3 resources, including but not limited to the fishing streams
 4 within the state, and upon receiving such ~~reports~~
 5 ~~information~~, the ~~said-commission department~~ shall without
 6 delay send formal notification in writing, by certified
 7 mail, to the appropriate federal agency or agencies
 8 involved, setting forth in detail the appropriate objections
 9 of the state of Montana to the acts and omissions aforesaid.
 10 ~~Said-commission~~ The department shall keep complete files and
 11 records, available for public inspection, of all matters and
 12 things done, and all communications and correspondence sent
 13 and received, pursuant to this section."

14 Section 12. Section 26-1802, R.C.M. 1947, is amended
 15 to read as follows:

16 "26-1802. Definitions. As used in this ~~act~~ chapter the
 17 following definitions apply:

18 (1) "department" ~~Department~~ means the department of
 19 fish and game.

20 (2) "director" ~~Director~~ means the director of the
 21 state department of fish and game.

22 ~~(3)--"commission"--means--the--fish--and--game--commission--~~

23 ~~(4)(3)~~ (3) "ecosystem" ~~Ecosystem~~ means a system of living
 24 organisms and their environment, each influencing the
 25 existence of the other and both necessary for the

1 maintenance of life.

2 ~~(5)(4)~~ "endangered Endangered species" means any
 3 species or subspecies of wildlife actively threatened with
 4 extinction due to any of the following factors:

5 (a) the destruction, drastic modification, or severe
 6 curtailment of its habitat, or

7 (b) its overutilization for scientific, commercial or
 8 sporting purposes, or

9 (c) the effect on it of disease, pollution, or
 10 predation, or

11 (d) other natural or man-made factors affecting its
 12 prospects of survival or recruitment within the state, or

13 (e) any combination of the foregoing factors. The
 14 ~~commission department~~ shall have authority to recommend that
 15 the legislature include any species or subspecies of fish
 16 and wildlife appearing on the United States' list of
 17 endangered native fish and wildlife as it appears on the
 18 effective date of this chapter (part 17 of title 50 of the
 19 Code of Federal Regulations, appendix D) as well as any
 20 species or subspecies of fish and wildlife appearing on the
 21 United States' list of endangered foreign fish and wildlife
 22 (part 17 of title 50 of the Code of Federal Regulations,
 23 appendix A), as such list may be modified hereafter.

24 ~~(6)(5)~~ "management Management" means the collection
 25 and application of biological information for the purposes

1 of increasing the number of individuals within species and
 2 populations of wildlife up to the optimum carrying capacity
 3 of their habitat and maintaining such levels. The term
 4 includes the entire range of activities that constitute a
 5 modern scientific resource program including, but not
 6 limited to, research, census, law enforcement, habitat
 7 acquisition and improvement, and education. Also included
 8 within the term, when and where appropriate, is the periodic
 9 or total protection of species or populations as well as
 10 regulated taking.

11 ~~†7†(6)~~ "nongame ~~Nongame~~ wildlife" means any wild
 12 mammal, bird, amphibian, reptile, fish, mollusk, crustacean
 13 or other wild animal not otherwise legally classified by
 14 statute or regulation of this state. Animals designated by
 15 statute or regulation of this state as predatory in nature
 16 are not classified as "nongame wildlife" for purposes of
 17 this ~~act chapter~~.

18 ~~†8†(7)~~ "optimum ~~Optimum~~ carrying capacity" means that
 19 point at which a given habitat can support healthy
 20 populations of wildlife species, having regard to the total
 21 ecosystem, without diminishing the ability of the habitat to
 22 continue that function.

23 ~~†9†(8)~~ "person ~~Person~~" means any individual, firm,
 24 corporation, association or partnership.

25 ~~†10†(9)~~ "take ~~Take~~" means to harass, hunt, capture, or

1 kill or attempt to harass, hunt, capture, or kill wildlife.
 2 ~~†11†(10)~~ "wildlife ~~Wildlife~~" means any wild mammal,
 3 bird, reptile, amphibian, fish, mollusk, crustacean or other
 4 wild animal or any part, product, egg or offspring or the
 5 dead body or parts thereof."

6 Section 13. There is a new R.C.M. section that reads
 7 as follows:

8 Uniform terminology. (1) Wherever the words "Montana
 9 fish and game commission", "state fish and game commission",
 10 "fish and game commission", "commission", "members of said
 11 commission", or "chairman of the commission" appear in
 12 26-104, 26-104.4, 26-104.5, 26-104.7, 26-108, 26-109,
 13 26-110, 26-110.3, 26-118, 26-121, 26-123, 26-126, 26-127,
 14 26-128, 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1,
 15 26-202.4, 26-202.5, 26-202.6, 26-202.7, 26-202.8, 26-204,
 16 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225,
 17 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302,
 18 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324,
 19 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501,
 20 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911, 26-912,
 21 26-913, 26-914, 26-915, 26-1120, 26-1121, 26-1123, 26-1124,
 22 26-1201, 26-1206, 26-1207, 26-1208, 26-1210, 26-1402,
 23 26-1403, 26-1502, 26-1503, 26-1504, 26-1505, 26-1509,
 24 26-1601, 26-1602, 26-1603, 26-1605, 26-1607, 26-1608,
 25 26-1609, 26-1610, 26-1612, 26-1613, 26-1614, 26-1701,

1 26-1702, 26-1704, 26-1804, 26-1805, 26-1806, 26-1807,
 2 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025,
 3 53-1028, 62-301, 62-304, 62-305, 62-306, 62-308, 62-310,
 4 62-311, 62-314, 62-401, 62-402, 62-403, 68-1402, 69-3502,
 5 69-3505, 69-3517, 69-3518, 75-5205, 89-3405, 89-3407, and
 6 89-3449, R.C.M. 1947, the words "department of fish and
 7 game" or "department", if it is clear which department is
 8 involved, are substituted therefor.

9 (2) The code commissioner may make any required
 10 grammatical changes necessitated by the replacement of
 11 certain words under subsection (1).

12 Section 14. Section 26-324, R.C.M. 1947, is amended to
 13 read as follows:

14 "26-324. Penalty. A person violating any state law
 15 pertaining to fish and game thereto, or the orders, rules,
 16 and regulations of the commission or department is, unless a
 17 different punishment is expressly provided by law for the
 18 violation, guilty of a misdemeanor and shall be fined not
 19 less than ~~twenty-five dollars--(\$25)~~ nor more than ~~five~~
 20 ~~hundred dollars--(\$500)~~, or imprisoned in the county jail
 21 for not more than ~~six--(6)~~ months, or both, fined and
 22 imprisoned. In addition, the person shall, in the discretion
 23 of the court, forfeit his license and privilege to hunt,
 24 fish, or trap within this state for a period of ~~sixteen--(16)~~
 25 months from the date of conviction."

1 Section 15. Repealer. Sections ~~26-103~~, 26-106, 26-124,
 2 and 82A-2003, R.C.M. 1947, are repealed.

3 SECTION 16. THERE IS A NEW R.C.M. SECTION THAT READS
 4 AS FOLLOWS:

5 Powers of the commission. The commission shall:

6 (1) set the policies for the protection, preservation,
 7 and propagation of the wildlife, fish, game, furbearers,
 8 waterfowl, nongame species and endangered species of the
 9 state, and for the fulfillment of all other responsibilities
 10 of the department as provided by law;

11 (2) establish the hunting, fishing, and trapping rules
 12 of the department;

13 (3) establish the rules of the department governing
 14 the use of lands owned or controlled by the department and
 15 waters under the jurisdiction of the department;

16 (4) have the power within the department to establish
 17 wildlife refuges and bird and game preserves;

18 (5) approve all acquisitions or transfers by the
 19 department of interests in land or water; and

20 (6) review and approve the budget of the department
 21 prior to its transmittal to the budget office; AND

22 (7) REVIEW AND APPROVE CONSTRUCTION PROJECTS WHOSE
 23 ESTIMATED COST IS MORE THAN \$1,000 BUT LESS THAN \$5,000.

24 SECTION 17. THERE IS A NEW R.C.M. SECTION THAT READS
 25 AS FOLLOWS:

1 Director to carry out policies. The director shall
2 carry out the policies of the commission and shall adopt
3 rules authorized by law to implement those policies.

4 SECTION 18. THERE IS A NEW R.C.M. SECTION THAT READS
5 AS FOLLOWS:

6 Grievance procedure. (1) An employee of the department,
7 aggrieved by a serious matter of his employment based upon
8 work conditions, supervision, or the result of an
9 administrative action, who has exhausted all administrative
10 remedies within the department, is entitled to a hearing
11 before the employee appeals board designated by the
12 department of administration, under the provisions of a
13 grievance procedure prescribed by the board, for the
14 resolution of his grievance.

15 (2) Direct or indirect interference, restraint,
16 coercion, or retaliation by an employee's supervisor or the
17 department against an aggrieved employee because the
18 employee has filed or attempted to file a grievance with the
19 board shall also be the basis for a grievance and shall
20 entitle the employee to a hearing before the board for
21 resolution.

22 (3) If, upon the preponderance of the evidence taken
23 at the hearing, the board is of the opinion that the
24 employee is aggrieved, it may issue an order to the
25 department requiring such action of the department as will

1 resolve the employee's grievance. The order of the board
2 shall be binding upon the department.

3 SECTION 19. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
4 ITS PASSAGE AND APPROVAL.

-End-

MONTANA
STATE LAW LIBRARY

REVISED CODES OF MONTANA

VOLUME 4

Part 1

1975 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
SECOND REPLACEMENT VOLUME 4 (PART 1)
OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING SECOND REPLACEMENT
VOLUME 4 (PART 1) THROUGH VOLUME 535 PACIFIC
REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



bering system of another state; provided, that such vessel shall not have been within this state for a period in excess of sixty (60) consecutive days. After sixty (60) consecutive days within this state, this state becomes the motorboat's state of principal use and the owner must apply for a Montana number, certificate of number and license decal.

(2) A motorboat from a country other than the United States temporarily using the waters of this state.

(3) A motorboat whose owner is the United States, a state or subdivision thereof.

(4). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 285, L. 1959; amd. Sec. 6, Ch. 514, L. 1973.

Amendments

The 1973 amendment deleted "or vessel" following "motorboat" in the preliminary clause; reduced the period dur-

ing which a motorboat from another state may be used without obtaining a Montana certificate of number from 90 to 60 days; added the second sentence to subdivision (1); and substituted "motorboat" for "vessel" near the beginning of subdivisions (2) and (3).

69-3508. Prohibited operation and mooring—enforcement. (a) No person shall operate or knowingly permit any person to operate, any motorboat or vessel, or manipulate any water-skis, surfboard, or similar device, or other contrivance, in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate, or knowingly permit any person to operate, any motorboat or vessel, or manipulate any water-skis, surfboard, or similar device, or other contrivance, while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana.

(c) and (d). * * * [Same as parent volume.]

(e) No person shall make reckless approach to, departure from or passage by a dock, ramp, diving board or float.

(f). * * * [Same as parent volume.]

(g) No person shall moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States or the board nor in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor shall any person deface, remove or destroy any such buoy, beacon or other authorized navigational marker maintained in the waters of this state.

(h) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment, such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

History: En. Sec. 8, Ch. 285, L. 1959; amd. Sec. 7, Ch. 514, L. 1973.

contrivance" in subsections (a) and (b); inserted "departure from" in subsection (e); and added subsections (g) and (h).

Amendments

The 1973 amendment inserted "or other

This is needed to understand the 1977